

MORGANTOWN BOARD OF ZONING APPEALS

Minutes

6:30 PM

December 19, 2007

City Council Chambers

MEMBERS PRESENT: Bernie Bossio, Leanne Cardoso, Mark Furfari, Nick Iannone, Jim Shaffer

MEMBERS ABSENT: None

STAFF PRESENT: Christopher Fletcher, AICP

I. MATTERS OF BUSINESS:

Approval of November meeting minutes - Iannone moved to approve the minutes as presented; second by Shaffer. The motion passed unanimously.

Approval of Bylaws Policy Annex 2 – Guidance in Fairness and Impartiality. Fletcher reported that the Planning Commission has enacted new and similar annex for more guidance on exparte issues. Annex 2 for the Board of Zoning Appeals is somewhat different from the Planning Commission's in that the Board of Zoning Appeals hearings are all considered "quasi-judicial" and the Planning Commission's are not. The policy is broken down into 5 sections:

1. Define what a quasi-judicial hearing is;
2. Define bias;
3. Define conflict of interest
4. Define exparte contact;
5. Agreeing to follow performance as a group

Fletcher stated that The Planning Commission approved their policy annex at their December meeting. There being no questions from the Board, Shaffer moved to approve the Approval of Bylaws Policy Annex 2; seconded by Cardoso. The motion passed unanimously. Fletcher noted the Chair would sign the resolution and signature sheets and they will be included for the Board in next month's packet.

II. OLD BUSINESS:

NONE

III. NEW BUSINESS:

BA07-02 / St. Clair / Administrative Appeal. Fletcher reported a petition received from Misty St.Clair, 565 Burroughs Street, Morgantown, WV, for an administrative appeal of the Planning Department's interpretation and administration of Article 1329.02 "Definition of Terms" and Table 1331.05.01 "Permitted Land Use" of the Planning & Zoning Code as they relate to kennels for property located at 565 Burroughs Street.

Fletcher read the Staff Report stating that Article 1329.02 "Definition of Terms" of the Planning & Zoning Code limits the keeping of four (4) or more dogs or small animals to "commercial kennels" where permitted under Table 1331.05.01 "Permitted Land Use."

In response to complaints, the Planning Department initiated an investigation to ascertain whether or not the number of dogs located at 565 Burroughs Street was in violation of the City's Planning & Zoning Code. Addendum A of this report illustrates the location of the subject site.

Fletcher provided the following chronological order of the Planning Department's enforcement efforts:

- July 2007 – Staff received complaints that too many dogs were present at 565 Burroughs Street.
- July 23, 2007 – A letter was sent to the current resident of the subject address (see petitioner's application Attachment 1).
- August, 2007 – The Planning Department received a call from Ms. St. Clair requesting additional information and clarification concerning the keeping of dogs and small animals in the City of Morgantown.
- September 10, 2007 – A letter of explanation was sent to Ms. St. Clair that included a deadline of September 30, 2007 to come into compliance with City Code (see petitioner's application Attachment 2).
- September 25, 2007 – The Planning Department received a letter from Ms. St. Clair stating that she believed she was in compliance with City Code based on her understanding of the term "premise" and the fact she owned two parcels (see petitioner's application Attachment 3).
- November 5, 2007 – A final letter of compliance was sent to Ms. St. Clair giving her two options: 1) issuance of citations and a hearing before the Municipal Judge; or, 2) filing an administrative appeals petition for a hearing before the Board of Zoning Appeals (see petitioner's application Attachment 4).
- November 8, 2007 – Ms. St. Clair complied with the November 5, 2007 letter by submitting an administrative appeal relating to the Planning Department's interpretation and administration of:

ARTICLE 1329.02 DEFINITION OF TERMS.

KENNEL, COMMERCIAL – **Any lot or premises** on which four (4) or more dogs, or small animals, at least four (4) months of age, are kept.

Fletcher stated that the petitioner asserts that the Planning Department erred in administering the provisions of Article 1329.02 by not recognizing that "**any lot or premises**" permits her to keep three (3) dogs for Parcel 87 of Tax Map 55 and three (3) dogs for Parcel 87.3 of Tax Map 55.

Fletcher noted that Addendum B of the Staff Report contains all related Planning & Zoning Code provisions as well as additional information drawn from other sources as permitted by Article 1329.02. The following principles were submitted to establish justification for the Planning Department's interpretation, administration, and enforcement of the present case.

- The petitioner has admitted to registering six (6) dogs with the Monongalia County Assessor's Office at the subject location (see petitioner's application Attachments 7 and 8).

- Article 1329.02 provides that the keeping of four (4) or more dogs or small animals is considered a “commercial kennel.”
- “Commercial Kennel” is not a listed in Table 1331.05.01 as a permitted use in the R-1 District
- Article 1327.03 “Prohibited Uses and Acts” provides that no building, structure or premises may be used for any purpose other than those permitted in the zoning district in which the **building, structure or premises** is located (emphasis added).
- Article 1393.01 “Remedies and Penalties” provides enforcement provisions for violations of the Planning & Zoning Code.
- The term “premises” is not defined in Article 1329.02. In such instances, the Planning Director may use any standard dictionary or American Planning Association publication to determine the meaning of a term used in the Planning & Zoning Code.

The following definitions were used in determining the meaning for the term “premises”:

- “An area of land occupied by the buildings or other physical uses which are an integral part of the activity conducted upon the land and such open spaces as are arranged and designed to be used in conjunction with that activity.”

A Planner’s Dictionary. (2004). American Planning Association; Planning Advisory Service Report Number 521/522. Rutgers University Press.

- “A lot, parcel, tract, or plot of land together with the buildings and structures thereon.”

Moskowitz, Harvey S., and Carl G. Lindbloom. (1993). *The New Illustrated Book of Development Definitions.* Rutgers University Press.

The petitioner owns two separate parcels (see petitioner’s application Attachments 5 and 6) – Parcel 87 contains a single-family dwelling unit and adjoins Parcel 87.3, which is currently vacant open space. It is the opinion of the Planning Department, based on the referenced definitions, that the subject land, the principal structure, and any accessory structures that may exist are clearly integral to and used in conjunction with one sole activity, which thereby constitutes one premise.

- Article 1329.01 “Rules of Construction, Intent and Usage” provides that the use of the term “or” indicates that the connected items, conditions, provisions, or events shall apply singly or in any combination. The Article also provides that “either/or” indicates that the connected items, conditions, provisions, or events shall apply singly but not in combination.
- It is the opinion of the Planning Department that if the intent of 1329.02 was to allow the petitioner to keep three (3) dogs for each parcel, than the definition of “commercial kennel” would have been written as: **Either any lot or any premises** on which four (4) or more dogs, or small animals, at least four (4) months of age, are kept.
- The petitioner asserts in her application submission that, “if we (the St. Clairs) are not allowed to have 3 dogs on each of our deeded lot or premises, then why has the city accept(ed) our money all these years?”

- It is the duty of the County Assessor to collect a head tax of \$3 for each dog six months or older and to collect an additional \$3 in Morgantown, Westover, Star City, and Granville. The City of Morgantown receives a portion of these funds from the County, which is then used to partially fund animal control services that are contracted with the County. The City of Morgantown does not receive a listing of who has paid the dog head tax, where they are located, or how many animals have been registered by a particular person or at a particular location. As such, there is currently no method in place that would allow the dog head tax to assist in administering and enforcing the subject provision of the Planning & Zoning Code.
- It is the opinion of the Planning Department that restrictions on the number of dogs and small animals in urban environments are intended to ensure safe and sanitary living conditions for both humans and animals. Further, they are intended to mitigate adverse impacts to the quality of life for adjacent properties and residents that may arise from overcrowded animals.
- It is the opinion of the Planning Department that the basis used by the petitioner to allow three (3) dogs per lot contradicts the reasonable understanding that basic sustenance, care, and shelter needed to sustain these animals can be provided on the vacant lot alone. Although three (3) dogs may enjoy the open space of Parcel 87, they are in fact cared for from and within the single-family dwelling located on Parcel 87.3.
- It is the opinion of the Planning Department that the construction and usage of terms should not be manipulated in such a manner that undermines or circumvents the intent of the Planning & Zoning Code.

Fletcher noted that letters in opposition were received from:

Suzette Wright, 575 Burroughs Street
 Nora and Heimo Reidell, 1243 Corvet Avenue
 Wanda Smith, 559 Burroughs Street
 Elizabeth Almano, 1228 Corvet Avenue
 Cheryl Paul, 562 Burroughs Street
 Colleen Murray, 1284 Broadview Drive
 Roy and Ruth Butcher, 1233 Corvet Avenue

Petitioner Misty St.Clair was present to speak on behalf of her petition. St. Clair stated that she has two separate deeded lots that are not used in conjunction with one another. They were deeded to her at two separate times. The vacant lot was purchased for her daughter. St. Clair owns 6 dogs, 2 large and 4 smaller ones. She believes she is in compliance with the code.

For clarification, Cardoso stated that since St. Clair did not want to be considered a kennel, did she want the Board to determine whether there are two different lots or if the property is one lot. St. Clair stated that is the resolution she is seeking.

Bossio stated that one lot is vacant and one lot contains the premise.

Shaffer asked if the vacant lot was kept mowed, etc., for the enjoyment of the dogs.

Furfari asked where the dogs ate. St.Clair replied one ate on the back porch, one ate on the side porch and two ate inside the residence. She also stated that when the temperature is below

10 degrees, all animals are kept inside the house. If necessary, she stated a shelter could be built on the other property. When her property taxes are filed, 565 Burroughs Street is the address used for all 6 dogs.

Bossio asked for public comment in favor of the petition. There being none, he then asked for public comment in opposition of the petition.

Cheryl Paul, 562 Burroughs Street, stated that she owns three adjacent properties and lives on the other side of Burroughs. Her house is on one lot and her backyard is a separate deeded lot. By her logic, she could also have six dogs. She believes the area is zoned R-1 for a reason, and the only places zoned for kennels are in B-1 and B-2. Paul's concerns are not that the animals are not being cared for; rather they are taken out between 5:00 and 5:30 AM and stay outside until 7:00 or 7:30 AM. They are barking a lot, and her tenants are complaining. Requests the Board votes against the appeal.

Suzette Wright, 575 Burroughs Street, stated that when she moved in 3 ½ years ago, the petitioner only had 4 dogs, then she added two more. She continued that they bark outside her bedroom window. Wright contacted the City and she was advised residents could have three dogs per household.

Pat Shephard, 1232 Corvet Street, asked whether an individual could own property elsewhere in the city, with no dwelling on it, live in Suncrest and have 6 dogs. He questioned how 6 dogs in one house could add to the quality of life. Shephard lives in close proximity to the St. Clair residence. While the barking has actually not awakened him, the dogs are out early every morning.

With no other comments, Bossio closed the public comment portion of the hearing and offered a five minute rebuttal to St. Clair.

St. Clair advised she had no idea of any complaints with the neighbors. She has not personally been contacted by anyone. She stated there was one complaint against her approximately 7 or 8 years ago when she first moved in. The property owners next door to her had cats and they bothered by her dogs since they kept coming into her lot. The dogs are fenced. Had anyone contacted her to let her know they had a problem; she would have made sure it was taken care of.

Bossio asked for Staff's recommendation.

Fletcher stated that the petitioner's administrative appeal focuses on construction, intent, and usage of the term "or" and the Planning Department's interpretation of the term "premises." Because these terms appear throughout the City's Planning & Zoning Code, the consequence of the Board's decision has greater impact on the administration of the Code as a whole than the present case.

The Planning Department, although sympathetic to the sentiments of animals and their significance to the family unit, maintains that the intent and literal application of the Code have been rightly applied and should be sustained.

As such, the Planning Department recommends that the petitioner be ordered to comply with the Planning & Zoning Code, within a period acceptable to the Board. Further, should the

petitioner fail to comply with said order, she be issued citation(s) in accordance with Article 1393.01.

Shaffer asked what Staff was proposing. Fletcher stated that since the petitioner believed she was in compliance, no citations were issued and felt the issue would be better addressed by bringing it to the Board. Fletcher stated that this has been an ongoing problem since July. If the petition is denied, the petitioner should be given at least 30 days to rectify the problem, which coincides with her 30-day period to appeal the Boards decision to the Circuit Court.

Cardoso stated that after reviewing the petition, the only code section dealing with the number of dogs at a property is for kennels, and its definition is any place with four or more animals. This has been the policy of the City for many years. There are no performance standards for kennels. With respect to the phrase "any lot or premise", Cardoso is bothered by the fact that if there are two separate deeded lots, and if one of those lots is sold (to her daughter as petitioner stated), that person could build a fence and keep three dogs there.

Bossio believes that could not be done and as an example, stated that he had homes built on two lots and wanted to put in a swimming pool. He could not do this unless the property was subdivided into one lot. An accessory structure cannot be built without a premise on it.

Furfari believes that since the County Assessor collects the \$3.00 tax per dog, there should be a way this information is communicated to the City. The management of animals inside the City needs to be addressed. Animal control does not answer the phone after 5:00 AM; the idea of a part-time county dog warden is also a problem and not working. Fletcher will look into working with the Assessor concerning the collection of dog taxes and zoning administration.

Shaffer stated he is inclined to vote no, but request that the applicant be brought into compliance within 60 or 90 days. Bossio agreed with Shaffer, but feels there is also an obligation to other residents who have to deal with the documented problems.

Fletcher added that if no time period were given to the petitioner, the City would not issue any citations for 30 days due to the appeal period.

Shaffer then moved to deny the administrative appeal and ask the applicant to present a remedy to the Planning Staff with 45 days. The motion died for lack of a second.

Bossio stated that he believes the only thing the Board is charged with doing is to determine whether or not an applicant is in compliance. The City actually has to take care of citation issues, if any. He also believes the appeal should be denied, but he does not feel the Board should designate the number of days the applicant has to come into compliance.

Furfari moved to deny the appeal by sustaining the Planning Department's interpretation based on the findings and conclusions presented in the Staff Report of 1329; second by Cardoso. The motion passed unanimously.

Bossio advised St. Clair that she would have 30 days to appeal this decision in Circuit Court.

IV. PUBLIC COMMENT:

J.J. Dodson, 1222 Corvet Avenue, stated that he lives in close proximity to the petitioner and is not really bothered by the dogs and was surprised to hear that they bother so many people.

Until today, the petitioner felt she was in compliance, but if she is not he feels she should be given the proper amount of time to correct the problem. He requests that Ms. St. Clair is dealt with fairly.

Misty St. Clair advised the Board that since the appeal was denied, her mother has agreed to take three of her dogs and she noted those three dogs would still be in the neighborhood and probably still barking. St. Clair asked what time of day dogs are permitted to bark? Bossio then stated this public comment portion was not to readdress the appeal. There being no additional public comments, the public comment portion of the meeting was closed.

Fletcher advised that we would include information concerning barking dogs in his letter notifying the petitioner of the Board's decision.

V. STAFF COMMENTS:

Bossio presented a Certificate of Appreciation on behalf of the Board to Iannone for his service on the Board of Zoning Appeals. Iannone will be leaving the country and moving to Italy.

The meeting was adjourned at 7:30 PM